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Nathalie Bergeret

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EXAMINER

BODAWALA, DIMPLE N

ART UNIT

PAPER NUMBER

1791

NOTIFICATION DATE

DELIVERY MODE

03/03/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No. 10/581,616	Applicant(s) BERGERET, NATHALIE	
	Examiner DIMPLE N. BODAWALA	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-43, 45-52, 56 and 57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-43, 45-52, 56 and 57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The amendment to the claim and new discovery of Liotto et al. (US 4,644,858) caused the withdrawal of allowable subject matter of claims 52-53.

New Ground of Rejections

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. **Claims 38-43, 45-51 and 56-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson (US 2,033,574) in view of either Liorente Hompanera (US 2001/0043977) or Sollich (GB 697,071).**

4. As to claim 38, **Henderson ('574)** discloses an improved pie-pan as a mould for culinary preparation, wherein mould comprising **a hollow piece** (See figure 1); and a **removable rigid plate-shaped bottom wall (15) as a plate-shaped base stiffener** (See figure 1; col.1 lines 28-30), wherein hollow piece of the pan having an **upright side wall (10)** with **a lower base (13)** which is connected to a lower portion of the hollow piece (See figure 1), wherein the lower portion of the hollow piece comprises **a lower lip (13)** holding the rigid plate-shaped base stiffener (15) and defining with the plate shaped base stiffener a bottom wall of the mold (See figures 2-3). It further teaches that the mould comprises **upper lip extending above the lower lip**, defining with the lower lip a groove in which the plate-shaped base stiffener is removably received, and pinning the plate shaped base stiffener (15) against the lower lip (See figures 3-4).

5. Henderson discloses all claimed limitations as discussed above, but fails to teach or suggest that the material to be used to make hollow piece of the pie pan or mold as cited in claims.

6. Liorente Hompanera ('977) discloses use of silicone for manufacturing a confectionery moulds and baking receptacle, wherein the cooking pan is made of flexible elastomeric material such as silicone, wherein silicone material is a heat curable elastomer (See paragraph # 11, 13 and 14), which is intended for application in contact

with food stuff. It further involved for the operation of easily removal of the baked product from the mold (See abstract), and the operation of easily washed of mold or receptacle. Furthermore, silicone having a high flexibility which is involved to make a mold or receptacle with desire shape and size to suit user requirement (See para. # 13).

7. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **Henderson ('574)** by providing a flexible elastomeric material such as silicone material for pan rather than a rigid material because such flexible elastomeric material is involved for the operation of easily removal of the baked product from the mold (See abstract), and the operation of easily washed of mold or receptacle, further involved to make a mold or receptacle with desire shape and size to suit user requirement (See paragraph # 13), and silicone material is a heat curable elastomer (See paragraph # 11, 13 and 14), which is intended for application in contact with food stuff as suggested by **Liorente Hompanera ('977)**.

8. Sollich discloses flexible mold which is made of rubber, wherein mold comprises bottom portion for receiving metal reinforcement member to give the desired rigidity (See page 1).

9. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **Henderson ('574)** by modifying the mold with a flexible elastomeric material of **Sollich** because such material is a heat curable elastomer which is intended for application in contact with food stuff and other properties of material is intended for the operation of easily removal of the baked product from the mold, and the operation of easily washed of mold; and also such material is non-deformable material so the casting mold body or mold profile with rim and bottom portion both of which retain their shape during different applications.

10. As to claims 39-40, **Henderson** further teaches that the lower base of the sidewall is formed integrally with the lower lip (See figure 3), wherein the lower lip is a continuous lip (See figure 3).

11. As to claim 41-43, **Henderson** further teaches that the lower lip is a lower ring-shaped wall limited towards the center of the bottom wall by a hole that is covered by the plate-shaped base stiffener (See figures 3-4). Figure 3 of Henderson further shows that the lower ring-shaped wall occupies some area of the total surface area of the bottom wall of the mould, but fails to provide ranges as cited in claims 42-43. So, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **Henderson ('574)** by optimizing range of the total surface area of the plate shaped base stiffener covered by the lower ring shaped wall, wherein such configuration of the mould allowed the user to slide and/or clip the plate shaped base stiffener easily on the lower ring-shaped wall, and, thus, lower ring-shaped wall retains the plate shaped base stiffener during the various applications. Claimed range and the prior art range of composition are closed enough to demonstrate similar properties and be expected to have a standard results, *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985).

12. As to claims 45-47, figure 3 of **Henderson** shows that the length of the extension of the lower lip from the lower base of the side wall and the length of the upper lip, but fails to provide ratio between these two lengths. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **Henderson ('574)** by optimizing ratio of the length of the extension of the lower bead from the lower base of the side wall to the length of the upper bead in desired range and/or as cited in the claim, in order to define dimension of lower ring shaped wall, so the user enable to slide and/or clip the plate shaped base stiffener easily on the lower ring-shaped wall, and, thus, lower ring-shaped wall retains the plate shaped base stiffener during the various applications. It is not necessary that the prior art suggests expressly or in so many words the changes or possible improvements the inventor made but that the knowledge is clearly present. *In re Sernaker*, 217 USPQ 1 (Fed. Cir. 1983).

13. As to claim 48, **Henderson** further teaches that the mould comprises an upper lip is a continuous lip (See figures 2-3).

14. As to claims 49-50, **Henderson** ('574) discloses mould having a lower portion which define an upper lip, wherein upper lip having a single segment (See figures 2-3), but fails to teach or suggest that upper lip having several segments as cited in claims of the instant application. So it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the segment of upper lip of lower portion of hollow piece mould of **Henderson** ('574), in order to define a lower ring-shaped wall with varied thickness, wherein such configuration of the mould enable to retain the rigid plate shaped base stiffener during the various applications. It has been held that a mere change in shape without affecting the functioning of the part would have been within the level of ordinary skill in the art, *In re Dailey et al.*, 149 USPQ 47; *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23

15. As to claim 51, **Henderson** further teaches that the lower ring-shaped wall displays variation in thickness (See figures 3-4).

16. As to claim 56, figures 3-4 of **Henderson** further show that the plate-shaped base stiffener is clipped into the groove.

17. As to claim 57, **Henderson** further teaches that the hollow piece (10) is of one-piece construction and surrounds the removable rigid plate shaped base stiffener (15) (See figures 1-2).

18. Claims 38-43, 45-53 and 56-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liotto et al. (US 4,644,858) in view of either Liorente Hompanera (US 2001/0043977) or Sollich (GB 697,071).

19. As to claim 38, **Liotto et al.** ('858) discloses a backing pan assembly as a mould for culinary preparation, wherein mould comprises a cylindrical shell (11) as a hollow piece is made from suitable synthetic plastic material such as polycarbonate, POLYLITE (or polyester resin) having high heat resistance and good physical properties (See col.4

lines 31-40). It further teaches that the mould comprises a circular base (10) having good structural strength (See col.4 lines 28-29), which suggests that the material of the base is rigid and removable (See figure 2). It further teaches that the hollow piece (11) having an upright side wall with a lower base (12) which is connected to the lower portion (11D) of the hollow piece (11), wherein the lower portion (11D) comprising a lower lip (13) for holding the removable rigid plate-shaped base stiffener (10) and define a bottom wall of the mould (See figure 1). It further teaches that the mould comprises an upper lip (see at reference 12) extending above the lower lip (13), defining with the lower lip a groove in which the plate-shaped base stiffener is removably received (See figure 4), and pinning the plate-shaped base stiffener against the lower lip (See figure 4).

20. **Liotto et al.** further teaches that the hollow piece is made from suitable synthetic plastic material such as polycarbonate, POLYLITE (or polyester resin) having high heat resistance and good physical properties (See col.4 lines 31-40), but fails to teach or suggest that flexible elastomer material for making hollow piece as cited in claim.

21. **Liorente Hompanera ('977)** discloses use of silicone for manufacturing a confectionery moulds and baking receptacle, wherein the cooking pan is made of flexible elastomeric material such as silicone, wherein silicone material is a heat curable elastomer (See paragraph # 11, 13 and 14), which is intended for application in contact with food stuff. It further involved for the operation of easily removal of the baked product from the mold (See abstract), and the operation of easily washed of mold or receptacle. Furthermore, silicone having a high flexibility which is involved to make a mold or receptacle with desire shape and size to suit user requirement (See para. # 13).

22. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **Liotto et al. ('858)** by providing a flexible elastomeric material such as silicone material for pan rather than a rigid material because such flexible elastomeric material is involved for the operation of easily removal of the baked product from the mold (See abstract), and the operation of easily washed of

mold or receptacle, further involved to make a mold or receptacle with desire shape and size to suit user requirement (See paragraph # 13), and silicone material is a heat curable elastomer (See paragraph # 11, 13 and 14), which is intended for application in contact with food stuff as suggested by **Liorente Hompanera ('977)**.

23. **Sollich** discloses flexible mold which is made of rubber, wherein mold comprises bottom portion for receiving metal reinforcement member to give the desired rigidity (See page 1).

24. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **Liotto et al. ('858)** by modifying the mold with a flexible elastomeric material of **Sollich** because such material is a heat curable elastomer which is intended for application in contact with food stuff and other properties of material is intended for the operation of easily removal of the baked product from the mold, and the operation of easily washed of mold; and also such material is non-deformable material so the casting mold body or mold profile with rim and bottom portion both of which retain their shape during different applications.

25. As to claims 39-40, **Liotto et al.** further teaches that the lower base of the side wall is formed integrally with the lower lip (See figures 2 and 4), wherein the lower lip (13) is a continuous lip (See figures 2 and 4).

26. As to claims 41-43, **Liotto et al.** further teaches that the lower lip is a lower ring-shaped wall limited toward the center of the bottom wall by a hole that is covered by the plate-shaped base stiffener (10) (See figure 4). Figure 4 further shows that the lower ring-shaped wall occupies some area of the total surface area of the bottom wall of the mould, but fails to provide the range as cited in claims. So, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **Liotto et al.** by optimizing range of the total surface area of the plate shaped base stiffener covered by the lower ring shaped wall, wherein such configuration of the mould allowed the user to slide and/or clip the plate shaped base stiffener easily on the lower

ring-shaped wall, and, thus, lower ring-shaped wall retains the plate shaped base stiffener during the various applications. Claimed range and the prior art range of composition are closed enough to demonstrate similar properties and be expected to have a standard results, *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985).

27. As to claims 45-47, **Liotto et al.** further teaches that the length of the extension of the lower lip from the lower base of the side wall and the length of the upper lip (See figure 2), but fails to provide ratio between these two lengths. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **Liotto et al.** by optimizing ratio of the length of the extension of the lower bead from the lower base of the side wall to the length of the upper bead in desired range and/or as cited in the claim, in order to define dimension of lower ring shaped wall, so the user enable to slide and/or clip the plate shaped base stiffener easily on the lower ring-shaped wall, and, thus, lower ring-shaped wall retains the plate shaped base stiffener during the various applications. It is not necessary that the prior art suggests expressly or in so many words the changes or possible improvements the inventor made but that the knowledge is clearly present. *In re Sernaker*, 217 USPQ 1 (Fed. Cir. 1983).

28. As to claims 48-50, Figure 2 of **Liotto et al.** further shows that the upper lip (12) is a continuous lip, wherein upper lip comprises suitable segment defining with the lower ring-shaped wall a discontinuous groove (See figure 4), but fails to teach or suggest that upper lip having several segments as cited in claims of the instant application. So it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the segment of upper lip of lower portion of hollow piece mould of **Liotto et al.**, in order to define a lower ring-shaped wall with varied thickness, wherein such configuration of the mould enable to retain the rigid plate shaped base stiffener during the various applications. It has been held that a mere change in shape without

affecting the functioning of the part would have been within the level of ordinary skill in the art, *In re Dailey et al.*, 149 USPQ 47; *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

29. As to claim 51, figure 4 of **Liotto et al.** further shows that the lower ring shaped wall having higher thickness near upper lip, thus suggests that the lower ring-shaped wall displays variation in thickness.

30. As to claims 52-53, **Liotto et al.** further teaches that the lower ring-shaped wall has a lower surface which is substantially flat and upper surface presenting a shouldering making it thicker in a peripheral part that is close to the lower base of the side wall than in a central part that is close to the hole, the plate shaped base stiffener having an annular step in order to approximately follow the upper surface of the lower ring shaped wall on which it is disposed (See figure 4), wherein the lower surface comprises a flange at the external perimeter thereof (See figure 4).

31. As to claim 56, figure 4 of **Liotto et al.** further shows that the plate shaped based stiffener is clipped into the groove.

Response to Arguments

32. For the combination rejection of claims over **Perrottet (US 559,788) in view of either Llorente Hompanera (US 2001/0043977) or Sollich (GB 697,071)**, wherein Applicant argues that **Perrottet** discloses a rigid metal mold comprising a hollow piece (A) having a vertical wall, and a plate shape base (B), wherein lateral wall comprises two parts (10,11) permanently hinged together by a vertical axis hinge, wherein first part (10) which forms with the plate shape base (B) a single element, and a second part (11) which is movable relative to the first part (10) between open and closed positions; And the moveable part (11) comprises a lower portion having a lower metal lip (18) delimiting downwardly a groove (17) which receives the peripheral rim of the plate-shape base (B) when the moveable part (11) is in its closed position. Applicant argues that **Perrottet** discloses the groove is not upwardly delimited by an upper lip, the plate-shaped base (B) cannot be pinned by such an upper lip against the lower lip (18), wherein the relative

movement of the groove of the movable part (11) in relation to the peripheral rim of the plate-shaped base (B) is a displacement according to a direction in the plane defined by the plate-shaped base (B). Thus, the presence of an upper lip able to pin the plate-shaped base (B) against the lower lip (18) would block the insertion of the rim in the groove that is desired by Perrottet. Applicant argues that Perrottet discloses the plate shape base (B) is not removable from the first part (10) of the lateral wall, or from the second part (11), wherein the plate shape base is only movable relative to the second part (11).

Applicant argues that Llorente Hompanera merely discloses the use of silicone in a mold for culinary preparation, which thus utilizes the flexibility of silicone as an alternative mechanism for facilitating the removal of the baked good from the mold.

Applicant argues that Sollich discloses a flexible mold comprising rigid plate-shaped base stiffener (4) vulcanized at the outer surface of the bottom wall of the mold.

Applicant argues that considering the applied references collectively, there would have been no apparent reason, to replace the non removable plate-shape base (B) of Perrottet with a removable one.

33. Applicant's all arguments are fully considered and found persuasive, and, therefore, rejection of claims over Perrottet has been withdrawn because Perrottet teaches that the bottom of the pan will be an integral portion of one of the sections, and the opposing section being grooved or channeled to receive the bottom (See page 1 lines 13-17), thus, Perrottet fails to disclose limitation of "a removable rigid plate-shaped base stiffener..." as cited in claims of the instant application.

Conclusion

34. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIMPLE N. BODAWALA whose telephone number is (571)272-6455. The examiner can normally be reached on Monday - Friday at 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PHILLIP C. TUCKER can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dimple N Bodawala
Examiner

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/D. N. B./
Examiner, Art Unit 1791

/Philip C Tucker/
Supervisory Patent Examiner, Art Unit 1791